



POLICE DEPARTMENT

February 6, 2023

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2022-25687
Police Officer Christopher Harris	:	
Tax Registry No. 943353	:	
102 Precinct	:	

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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Jamie Moran, Esq.
Department Advocate's Office
One Police Plaza, Room 402
New York, NY 10038

For the Respondent: John Tynan, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE KEECHANT L. SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Police Officer Christopher Harris, while assigned to the 102 Precinct, on or about January 24, 2021, discharged a firearm at a moving vehicle when deadly force was not being used against a member of the service or another person present, by means other than a moving vehicle.

P.G. 221-01

FORCE GUIDELINES
TACTICAL OPERATIONS

2. Police Officer Christopher Harris, while assigned to the 102 Precinct, on or about January 24, 2021, recklessly or negligently failed to activate his body-worn camera during police action that required mandatory activation.

P.G. 212-123, Pages 1-2

USE OF BODY-WORN CAMERAS
COMMAND OPERATIONS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on January 9, 2023. Respondent, through his counsel, entered a plea of Not Guilty to the charged misconduct. The Department called Sergeant Christopher Perez and Detective Jennifer Lew as witnesses, and introduced into evidence Body-Worn Camera ("BWC") footage from one of the officers at the scene. Respondent called Police Officer Whenderson Paul as a witness, and testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find Respondent Guilty, and recommend that he forfeit a total of 30 vacation days and be placed on one-year dismissal probation.

ANALYSIS

On the evening of January 24, 2021, there was a radio call for a dispute at a restaurant in Queens County. Respondent and his partner, Officer Whenderson Paul, responded to the location, as did two other units. Upon arrival, the officers learned of a car theft that had just

occurred, unrelated to the original dispute. An individual (“the complainant”) informed the officers that while he was inside the restaurant, someone had driven off in his Acura, which had been left idling outside. The complainant told the officers that he was able to track the location of his Acura with his phone. Sergeant Christopher Perez instructed Respondent and his partner to take the complainant and his girlfriend in their RMP to do a canvass for the stolen car; Respondent was the operator, and Officer Paul was the recorder. A second unit, with Police Officers Worrell and Rodriguez, drove behind Respondent’s vehicle in a police van, while the sergeant and his operator followed in a third car. The parties are in agreement about the relevant events that followed, much of which was captured by the BWC footage of Officer Paul (Dept. Ex. 2) and Officer Worrell (Resp. Ex. A).

The officers quickly located the Acura, turned on their lights and sirens, and followed the stolen car to the intersection of 97th Avenue and Allendale Street. The Acura turned right onto Allendale Street and pulled over, at which point Respondent angled his RMP in front of the Acura on the driver’s side, blocking it from proceeding. The police van pulled up at an angle behind the Acura, with the sergeant’s vehicle behind the van. Respondent exited his RMP from the driver’s side, while Officer Paul began to exit from the passenger side. As Officer Paul placed his right foot on the ground, the driver of the Acura accelerated forward, striking the front passenger door of the RMP, causing damage to the hinge; Officer Paul was not struck. Officer Paul then exited the RMP, drew his weapon, and repeatedly yelled at the driver of the Acura to stop moving and turn the engine off. Respondent moved around the rear of his RMP to the driver’s side of the Acura, drew his weapon, and shouted similar commands at the driver. (Tr. 18, 40, 44, 84-87, 93, 97-98, 107-08; Dept. Ex. 2 at 00:45-00:51)

Rather than obey the commands of the officers, the driver of the Acura reversed the vehicle toward the police van behind it. Respondent, standing just a few feet from the stolen car, discharged his firearm one time at the Acura, shattering the driver's side window, as the Acura hit the police van. (Dept. Ex. 2 at 00:52-00:55) The bullet struck the Acura's front-seat passenger in the chest, with the bullet exiting through his armpit and lodging in his bicep. He fell from the vehicle, was attended to at the scene, then brought to the hospital where he was treated and released that same night. The driver of the Acura, who was unharmed, was removed from the vehicle and taken into custody. Both the driver and passenger subsequently pled guilty to Unauthorized Use of a Vehicle. The complainant and his girlfriend, who were seated in the rear of Respondent's RMP, were not injured. Three photographs (Dept. Ex. 3) show the positions of the Acura, the police van, and the sergeant's vehicle at the scene, as well as the location of the shell casing from Respondent's weapon; Respondent's RMP had already been moved prior to the taking of the photographs. (Tr. 22-26, 56-58, 64-65, 73-74, 88)

Police Officer Paul testified that he was in the front passenger seat of the RMP being operated by Respondent, and the complainant and his girlfriend were in the rear of the car. He activated his BWC as he was stepping out of his vehicle. When he exited the RMP, he was focusing on the Acura, and testified that he did not see Respondent discharge his firearm, nor did he hear the gunshot. Officer Paul did see the window of the Acura shatter, and observed Respondent holstering his weapon before removing the driver of Acura from the car. Officer Paul did not fire his weapon. (Tr. 86-90, 94)

Sergeant Perez testified that as he was exiting his vehicle, he heard "the roar of an engine and a pop." He observed the police van shaking from being struck in the front by the rear of the Acura. Perez also saw Respondent holding his firearm near the driver's side of the Acura, where

there was broken glass. The passenger of the Acura was on the ground outside the car with a gunshot wound. Perez asked Respondent if he had fired his weapon, and Respondent answered, "I think so." Perez took Respondent's firearm for safekeeping, before handing it to the Crime Scene Unit that arrived at the scene. Perez also collected the BWCs of each of the officers at the location, including Respondent's. (Tr. 19-21, 30-39, 42)

Det. Jennifer Lew, an investigator with the Force Investigation Division, testified that she responded to the scene and viewed the BWC footage of the officers involved; Respondent did not record any part of the incident with his BWC. The shell casing recovered at the scene (see Dept. Ex. 3A) was forwarded to the Firearms Analysis Section, where testing determined that it was fired from Respondent's service weapon. (Dept. Ex. 1) Detective Lew also testified that she reviewed Respondent's CRAFT Reports for 2018-2020 (Dept. Ex. 4), and observed that he had been warned on several occasions regarding his failure to activate his BWC. (Tr. 50-51, 59-63, 67-68)

Respondent testified that he exited his RMP on the driver's side and heard the engine of the Acura. He observed the Acura move forward and strike the passenger door of his RMP, then reverse into the police van behind it. Because of the Acura's heavily tinted windows, Respondent could not see inside the vehicle. Respondent acknowledged that he was familiar with the Patrol Guide rule prohibiting police officers from discharging their weapons at a moving vehicle, and that he nevertheless did fire one shot at the Acura. He explained that he knew his partner was outside the RMP, and the complainant and his girlfriend were inside the vehicle, and he did not want anyone to get hurt as the driver of the Acura attempted to get away. Respondent also admitted that he did not activate his BWC, since the incident unfolded too quickly and he never had a chance to do so. (Tr. 107-13)

Specification 1 charges Respondent with wrongfully discharging his firearm at a moving vehicle. Section 221-01 of the Patrol Guide states that UMOS shall not discharge their firearms at or from a moving vehicle, unless deadly physical force is being used against the UMOS or another person present by means other than a moving vehicle.

Here, there was not any indication that the occupants of the stolen car were firing a weapon from the vehicle, or otherwise threatening the use of deadly physical force by means other than the vehicle itself. Also, this was not a vehicle ramming attack. Rather, this was a situation where Respondent discharged his firearm at the stolen Acura only after he and another police vehicle had blocked the Acura in, and the driver of the Acura was driving the stolen vehicle back and forth in an effort to escape. At trial, Respondent acknowledged that this was the context in which he fired one shot at the Acura, stating that he did so because he did not want anyone to get hurt by the vehicle.

However, even if he acted out of a genuine concern for the safety of those at the scene, Respondent was not justified in his actions. The incident was captured on video, and shows Respondent dangerously firing a shot into the Acura as it was backing up, shattering the driver's side window, and striking the front seat passenger in the chest. The credible evidence has established that Respondent acted contrary to the Patrol Guide in that he wrongfully discharged his firearm at a moving vehicle. Accordingly, I find Respondent guilty of Specification 1.

Specification 2 charges Respondent with failing to activate his BWC during the incident. Section 212-123 of the Patrol Guide requires UMOS to activate their BWC prior to engaging in certain police activity, including potential crime-in-progress assignments and vehicle stops.

Here, Respondent was one of the lead officers engaged in stopping an allegedly stolen vehicle. Nevertheless, it is undisputed that Respondent failed to activate his BWC during this

incident. Respondent admitted as much, testifying that events unfolded too quickly for him to do so. Under the specific circumstances presented here, I am not persuaded by that explanation, since Respondent could and should have activated his camera prior to exiting his RMP, just as other police officers at the scene, including Officers Paul and Worrell, did. Accordingly, I find Respondent guilty of Specification 2.

PENALTY

In order to determine an appropriate penalty, this tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent's employment history also was examined. *See* 38 RCNY § 15-07. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent, who was appointed to the Department on January 10, 2007, has been found guilty of wrongfully discharging his firearm at a moving vehicle, and failing to activate his BWC. The Disciplinary Guidelines provide for a presumptive penalty of 20 penalty days for wrongfully discharging a firearm at a moving vehicle, with an aggravated penalty of 30 days and dismissal probation. The Department Advocate recommends a penalty of 20 vacation days for each count, to run concurrently with each other, for a total of 20 vacation days. Under the specific circumstances presented here, a higher penalty is warranted.

The Patrol Guide prohibition against firing at a moving vehicle is grounded in important safety concerns. A vehicle that is fired upon may strike innocent bystanders if the driver loses control. A moving vehicle presents a difficult target, increasing the likelihood that a bystander or other vehicle occupants may be struck by the gunfire.

On the one hand, this Tribunal recognizes that Respondent's decision to discharge his firearm at the vehicle was motivated by his concern for his safety and that of his fellow officers, as well as the civilians inside his police vehicle. Indeed, the driver of the Acura, who had just stolen the unattended car leading to a vehicle chase, created a dangerous situation by crashing the Acura into two occupied police vehicles as he tried to escape. Also, Respondent has no formal disciplinary record in 16 years with the Department.

However, despite his good intentions, Respondent used exceedingly poor judgment in how he handled this situation, and the aggravated penalty is appropriate to address Respondent's egregious misconduct. First, he angled his RMP in front of the stolen car, leaving his vehicle, which also contained the complainant and his girlfriend, vulnerable to being hit. Then, as the driver of the stolen vehicle backed into the police van behind it, Respondent discharged a round at the stolen Acura, despite being unable to see who was inside the car through the tinted windows. The bullet he fired shattered the driver's side window and struck the front seat passenger, one of the exact scenarios envisioned in the formulation of the rule prohibiting such conduct. Fortunately, the results were not fatal, as the bullet passed through the passenger's chest and lodged in his bicep, and he was treated and released from the hospital that same night.

With his actions, Respondent ran dangerously afoul of an important safety rule. He discharged his firearm at a moving vehicle in a residential neighborhood, striking the passenger of the Acura in the chest, and there needs to be appropriate accountability. For this misconduct, a penalty of thirty (30) vacation days and one-year dismissal probation is warranted.

Additionally, Respondent has been found guilty of failing to activate his BWC. Although this was a rapidly unfolding incident, Respondent could and should have activated his camera before exiting his vehicle, just as his colleagues did. The presumptive penalty for negligent

failure to do so is three penalty days. However, Respondent had previously been instructed on several occasions regarding the importance of activating his BWC, and so an aggravated penalty of five (5) vacation days is warranted here. Since his failure to do so was part of the same overall incident, I agree with the Advocate that this penalty should run *concurrently* with the penalty for wrongfully discharging his firearm.

Taking into account the totality of the facts and circumstances in this matter, I recommend that Respondent forfeit a total of thirty (30) vacation days, and that he be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one (1) year pursuant to Section 14-115(d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings.

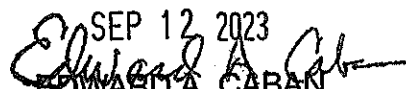
Respectfully submitted,



Jeff S. Adler

Assistant Deputy Commissioner Trials

APPROVED

SEP 12 2023

EDWARD A. CABAN
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Deputy Commissioner – Trials
To: Police Commissioner
Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER CHRISTOPHER HARRIS
TAX REGISTRY NO. 943353
DISCIPLINARY CASE NO. 2022-25687

Respondent was appointed to the Department on January 10, 2007. On his three most recent annual performance evaluations, he was rated "Exceeds Expectations" for 2019, 2020 and 2021.

Respondent has no formal disciplinary history.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials